



STATE OF TENNESSEE COMPTROLLER OF THE TREASURY



TENNESSEE BOARD FOR LICENSING HEALTH CARE FACILITIES

Performance Audit Report

November 2015

Justin P. Wilson, Comptroller



**Division of State Audit
Sunset Performance Section**

DEBORAH V. LOVELESS, CPA, CGFM, CGMA
Director

JOSEPH SCHUSSLER, CPA, CGFM
Assistant Director

SANDRA TULLOSS
Audit Manager

Dean Agouridis, CGFM
In-Charge Auditor

Fonda Douglas
Mike Huffaker
Ricky Ragan, CFE
Staff Auditors

Amy Brack
Editor

Amanda Adams
Assistant Editor

Comptroller of the Treasury, Division of State Audit
Suite 1500, James K. Polk State Office Building
505 Deaderick Street
Nashville, TN 37243-1402
(615) 401-7897

Reports are available at
www.comptroller.tn.gov/sa/AuditReportCategories.asp

Mission Statement
The mission of the Comptroller's Office is to improve the quality of life
for all Tennesseans by making government work better.

Comptroller Website
www.comptroller.tn.gov



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
DEPARTMENT OF AUDIT
DIVISION OF STATE AUDIT
SUITE 1500, JAMES K. POLK STATE OFFICE BUILDING
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-1402

PHONE (615) 401-7897
FAX (615) 532-2765

November 3, 2015

The Honorable Ron Ramsey
Speaker of the Senate
The Honorable Beth Harwell
Speaker of the House of Representatives
The Honorable Mike Bell, Chair
Senate Committee on Government Operations
The Honorable Jeremy Faison, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243
and
The Honorable John Dreyzehner, MD, Commissioner
Department of Health
710 James Robertson Parkway
Nashville, TN 37243

Ladies and Gentlemen:

Transmitted herewith is the performance audit of the Board for Licensing Health Care Facilities. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated*, the Tennessee Governmental Entity Review Law.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the Board for Licensing Health Care Facilities should be continued, restructured, or terminated.

Sincerely,

Deborah V. Loveless, CPA
Director

15002

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit

Board for Licensing Health Care Facilities

November 2015

We audited the activities of the Board for Licensing Health Care Facilities for the period of January 2014 to August 2015. Our audit objectives were to review the board's overall oversight of regulated facilities, including its licensing, inspection, and survey processes; to follow-up on the findings of the May 2008 and November 2011 Board for Licensing Health Care Facilities performance audits; to clarify who is legally licensed to assist in administering medications at assisted-care living facilities; to assess the Office of Health Care Facilities' efforts to determine health care facility compliance with fire sprinkler statutory requirements; to determine the status, including the legal status, of the memorandum of understanding between the Departments of Health and Commerce and Insurance regarding quality of service reviews of health maintenance organizations; and to evaluate the effectiveness of the transition from the former computer system, RBS, to the new system, LARS, so the Office of Health Care Facilities' operational needs are met.

For our sample design, we used nonstatistical audit sampling, which was the most appropriate and cost-effective method for concluding on our audit objectives. Based on our professional judgment, review of authoritative sampling guidance, and careful consideration of underlying statistical concepts, we believe that nonstatistical sampling provides sufficient, appropriate audit evidence to support the conclusions in our report. We present more detailed information about our methodologies in the individual report sections.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

PRIOR AUDIT FINDINGS

Follow-up Item 1: Untimely Surveys (Not Resolved)

November 2011 Board for Licensing Health Care Facilities and Division of Health Care Facilities Audit, Finding 1

Unresolved issue: Complaint and regular health surveys not always timely

Complaint and regular health surveys not always timely. In our random sample of the 25 facilities the Office of Health Care Facilities surveyed for complaints from July 1, 2014, to December 31, 2014, none of the 13 Immediate Jeopardy complaints were completed within the required inspection time frame, while only 3 of the 12 Non-immediate Jeopardy High complaints were completed. In our random sample of 25 facilities to determine the timeliness of their regular health surveys, 10 of the 25 facilities (40%) were not inspected within the legally required 15-month time frame, while surveyors did inspect the remaining 15 facilities on time. The 25 facilities averaged 17.5 months between surveys (page 6).

Follow-up Item 2: Abuse Registry (Partially Resolved)

May 2008 Board for Licensing Health Care Facilities Audit, Finding 1

Unresolved issue: Investigations of abuse allegations not always timely

Investigations of abuse allegations are not always timely. Of our random sample of 18 placements by the Department of Health in calendar years 2012 through 2014, seven cases were prioritized as Immediate Jeopardy. Only three of these cases (43%) met the federal and state requirement that on-site investigations of these allegations occur within two working days. In addition to delays initiating investigations, there were long delays in getting the results of investigations to the central office so individuals could be placed on the Abuse Registry in a timely manner. We found that for the 18 placement cases we reviewed, it took an average of 140 days from investigation completion to placement. For the seven Immediate Jeopardy cases, it took an average of 134 days. For these cases, times ranged from 61 to 308 days (page 13).

Follow-up Item 3: Board Waiver Policy (Partially Resolved)

May 2008 Board for Licensing Health Care Facilities Audit, Finding 3

Unresolved issue: Policy does not impose penalties and no proactive monitoring is occurring

Section 68-11-209, *Tennessee Code Annotated*, grants the Board for Licensing Health Care Facilities the authority to waive the rules and regulations for any facility as long as the waiver does not have a detrimental effect on the health, safety, and welfare of the public. In response to the prior finding, the department developed a policy memorandum requiring that a facility that has been granted a waiver notify the board in writing of the change in waiver status. However, the policy does not set penalties for waiver violation. Additionally, the department has not developed a proactive monitoring mechanism (page 15).

Follow-up Item 4: Interdepartmental Agreement (Resolved)

May 2008 Board for Licensing Health Care Facilities Audit, Finding 6

In November 2008, the Department of Health, in response to the recommendation that the required interdepartmental agreement be implemented, signed a memorandum of understanding

(MOU) with the Department of Commerce and Insurance substituting quality of service surveys with Health Maintenance Organization accreditation by the National Committee for Quality Assurance, a private, nonprofit organization specializing in health care quality control. The MOU became effective in December 2008 (page 16).

CURRENT AUDIT FINDINGS

The board allows unlicensed staff to administer medications in assisted living facilities because rules are unclear regarding who can administer medications, and penalties for rule violations are insufficient

Office of Health Care Facilities staff and the Assistant General Counsel advising both this staff and the Board for Licensing Health Care Facilities stated that it is unclear in statute who is qualified to administer medications to residents in assisted-care living facilities. Our review of relevant statutes, rules, and regulations determined that there is no clear or direct guidance regarding who is legally authorized to administer medications in assisted-care living facilities (page 18).

There is a significant backlog of documents to be scanned into LARS

A significant function of a licensing system like LARS is data retrieval. However, a current backlog of documents to be scanned makes these documents' data unavailable, other than manually. Department of Health staff stated that this backlog is significant—a year behind—and as of August 2015, amounts to around 300 boxes of documents. This backlog affects not only the Office of Health Care Facilities but also other Department of Health sections, including the Offices of Health Related Boards, Investigations, and Emergency Medical Services (page 23).

OBSERVATIONS

The audit report also discusses the following issues: the transfer of patients and residents from closed health care facilities to other facilities (page 21), and facility sprinkler system compliance (page 22).

Performance Audit

Board for Licensing Health Care Facilities

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
Purpose and Authority for the Audit	1
Statutory Responsibilities and Organization	1
AUDIT SCOPE	2
PRIOR AUDIT FINDINGS	4
Follow-up Item 1: Untimely Surveys (Not Resolved)	
November 2011 Board for Licensing Health Care Facilities and Division of Health Care Facilities Audit, Finding 1	4
Unresolved issue: Complaint and regular health surveys not always timely	6
Follow-up Item 2: Abuse Registry (Partially Resolved)	
May 2008 Board for Licensing Health Care Facilities Audit, Finding 1	10
Unresolved issue: Investigations of abuse allegations not always timely	13
Follow-up Item 3: Board Waiver Policy (Partially Resolved)	
May 2008 Board for Licensing Health Care Facilities Audit, Finding 3	14
Unresolved issue: Policy does not impose penalties and no proactive monitoring is occurring	15
Follow-up Item 4: Interdepartmental Agreement (Resolved)	
May 2008 Board for Licensing Health Care Facilities Audit, Finding 6	16
OBJECTIVES, METHODOLOGIES, AND CONCLUSIONS	18
Administration of Medications in Assisted-Care Living Facilities	18
Finding 1 - The board allows unlicensed staff to administer medications in assisted living facilities because rules are unclear regarding who can administer medications, and penalties for rule violations are insufficient	18

TABLE OF CONTENTS (Continued)

	<u>Page</u>
Health Care Facility Closures	20
Observation 1 - The Office of Health Care Facilities does not have policies and procedures to require documentation of the safe transfer of patients and residents from closed health care facilities to other facilities	21
Sprinkler Systems	21
Observation 2 - Facility sprinkler system compliance information was located in multiple computer systems, and compliance information for some facilities could not be determined	22
RBS Transition to LARS	22
Finding 2 - There is a significant backlog of documents to be scanned into LARS	23
APPENDICES	25
Appendix 1 - Title VI and Other Information	25
Appendix 2 - Performance Measures Information	27
Appendix 3 - Budget Information	27

Performance Audit

Board for Licensing Health Care Facilities

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the Board for Licensing Health Care Facilities was conducted pursuant to the Tennessee Governmental Entity Review Law, Title 4, Chapter 29, *Tennessee Code Annotated*. Under Section 4-29-237, the board is scheduled to terminate on June 30, 2016. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the board and to report to the Joint Government Operations Committee of the General Assembly. The audit is intended to aid the committee in determining whether the board should be continued, restructured, or terminated.

STATUTORY RESPONSIBILITIES AND ORGANIZATION

As stated in Section 68-11-202 et seq., *Tennessee Code Annotated*, the Board for Licensing Health Care Facilities is authorized to license and regulate hospitals, recuperation centers, nursing homes, homes for the aged, residential HIV supportive-living facilities, assisted-care living facilities, home care organizations, residential hospices, birthing centers, prescribed child care centers, renal dialysis clinics, ambulatory surgical treatment centers, outpatient diagnostic centers, adult care homes, and traumatic brain injury residential homes. As part of its authority, the board reviews health care facilities for compliance with fire and life safety code regulations.

The board consists of 18 members who are appointed by the Governor to serve four-year terms:

- two medical doctors;
- one oral surgeon;
- one pharmacist;
- one registered nurse;
- two hospital administrators;
- one osteopath;
- three representatives of the nursing home industry;
- one architect;
- one operator of a home care organization;

- one operator of a licensed residential home for the aged or a representative of the assisted-living industry;
- two consumer members; and
- the commissioner of the Department of Health and the executive director of the Commission on Aging and Disability, who serve ex officio.

As of August 2015, two board positions were not filled: one hospital administrator and one consumer member. Section 68-11-203, *Tennessee Code Annotated*, requires the board to meet at least twice a year. In calendar years 2014 and 2015, the board met this legal requirement.

The Department of Health's Office of Health Care Facilities provides administrative support to the board. The office monitors the quality of health care facilities through the state licensure and federal certification of health care facilities across the state, and the investigation of complaints regarding these facilities. Other areas the office is involved in include nurse aide training and certification, and the abuse registry for vulnerable persons, including the elderly. The Office of Health Care Facilities has a central office in Nashville and regional offices in Nashville, Jackson, and Knoxville. All inspections (surveys) and complaint investigations of health care facilities are conducted from the regional offices. An organizational chart of the office is on page 3.

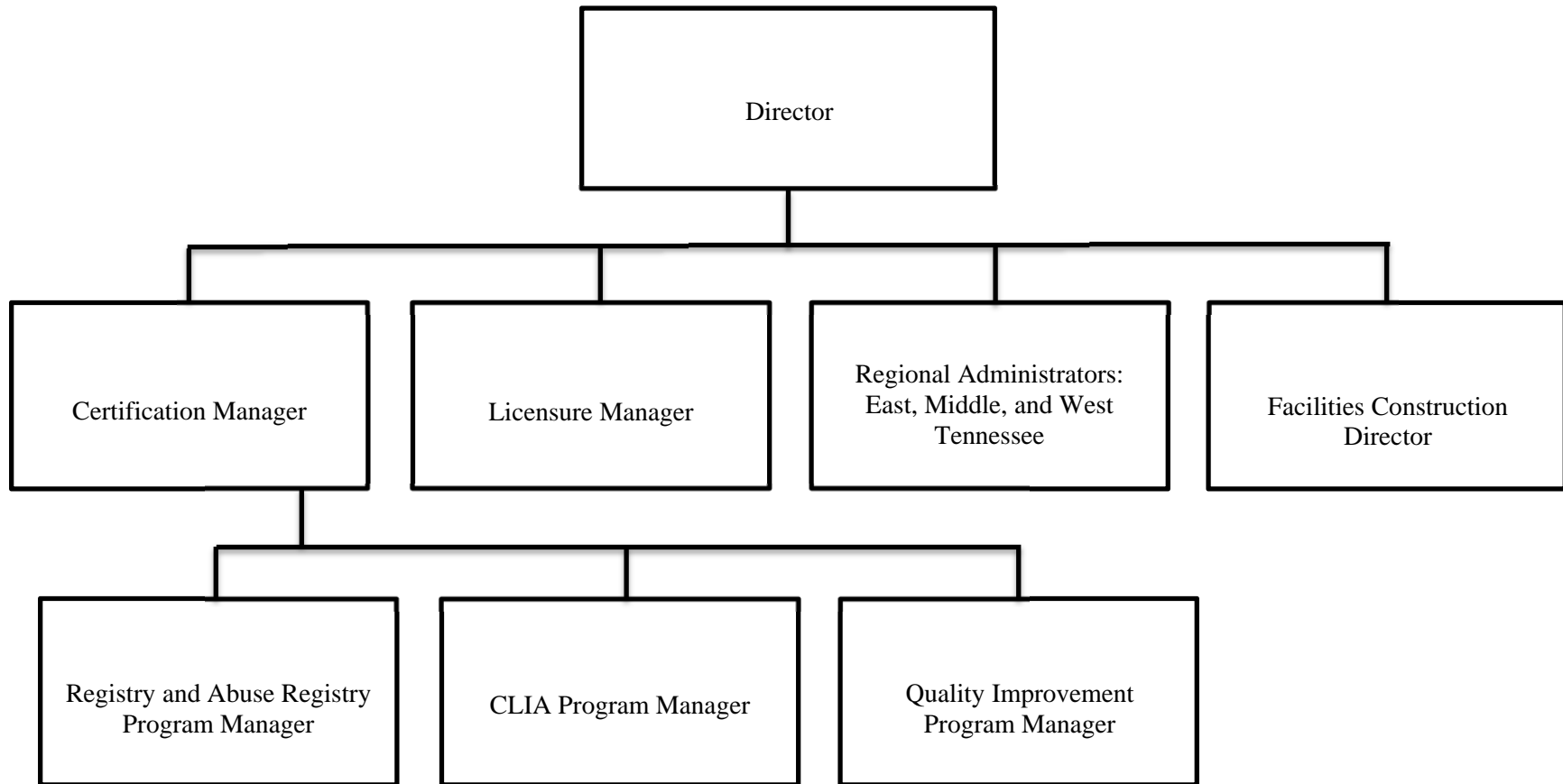
AUDIT SCOPE

We audited the board's activities for the period of January 2014 to August 2015. Our audit scope included a review of internal controls and compliance with laws and regulations that are significant within the context of the audit objectives. Board management, including that of the Office of Health Care Facilities, is responsible for establishing and maintaining effective internal controls and for complying with applicable laws, regulations, and provisions of contracts and grant agreements.

For our sample design, we used nonstatistical audit sampling, which was the most appropriate and cost-effective method for concluding on our audit objectives. Based on our professional judgment, review of authoritative sampling guidance, and careful consideration of underlying statistical concepts, we believe that nonstatistical sampling provides sufficient, appropriate audit evidence to support the conclusions in our report. We present more detailed information about our methodologies in the individual report sections.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

**Organizational Chart
Office of Health Care Facilities
As of April 2015**



PRIOR AUDIT FINDINGS

Follow-up Item 1 – Untimely Surveys (Not Resolved)

November 2011 Board for Licensing Health Care Facilities and Division of Health Care Facilities Audit, Finding 1:

“The Division of Health Care Facilities has not investigated complaints timely; some concerns have been addressed by amending statute and implementing a plan to close a backlog of complaints, but timeliness of complaint investigations is an ongoing problem.”

The audit recommended the following:

- The Division of Health Care Facilities [now Office of Health Care Facilities] should investigate complaints timely and in accordance with the time frames established by statute and the Centers for Medicare and Medicaid Services (CMS). Division management and staff should ensure that a backlog of complaints does not occur again, particularly for those complaints prioritized immediate jeopardy and non-immediate jeopardy high.
- The division should work with the Department of Health’s Bureau of Health Licensure and Regulation and fill vacant surveyor positions quickly so that CMS and state performance measures can be met.
- The division, the Department of Health’s Bureau of Health Licensure and Regulation, and the Department of Human Resources should collaborate to determine if the minimum qualifications for surveyor positions could be revised to include more health professions. In order to minimize the amount of travel by current surveyors, the division and Department of Health should consider the feasibility of locating some surveyors in county health departments.
- The division should require that all closed complaints include documentation of the surveyor’s review prior to closing, and should work with the information systems contractor to ensure that this information has been included before a complaint can be closed.

The Office of Health Care Facilities is responsible for assisting the Board for Licensing Health Care Facilities in licensing health care facilities operating in Tennessee and for recommending to the federal government certification for facilities meeting the Centers for Medicare and Medicaid Services (CMS) requirements to receive Medicare and Medicaid funding. The office also conducts relicensure surveys for state-licensed facilities and recertification surveys of facilities already federally certified. Whether a facility is licensed by the state or certified by CMS depends on whether it receives CMS funding. Certain types of facilities (e.g., nursing homes) can be both state licensed and federally certified. Other types of facilities are either state licensed (e.g., assisted-care living facilities, which receive no CMS

funding) or federally certified (e.g., rural health clinics). (See chart below on state licensed and federally certified health care facilities.) Section 68-11-210, *Tennessee Code Annotated*, requires that all state-licensed health care facilities be inspected within 15 months of the last inspection. In addition, the office is responsible for investigating complaints regarding health care facilities.

Table 1
Board for Licensing Health Care Facilities
Type and Number of Facilities and Level of Regulation
December 2014

Facility Type	Number of Facilities	State, Federal, or Both State and Federally Regulated
Adult Care Homes	2	State
Assisted-Care Living Facilities	291	State
Birthing Centers	4	State
HIV Supportive Living Facilities	0	State
Outpatient Diagnostic Centers	46	State
Residential Homes for the Aged	128	State
Comprehensive Outpatient Rehabilitation Facilities	4	Federal
Intermediate Care Facilities for Intellectual and Developmental Disabilities (ICF)	153	Federal
Outpatient Physical Therapy	67	Federal
Portable X-ray Units	15	Federal
Psychiatric Residential Treatment Facilities	39	Federal
Rural Health Clinics	87	Federal
Ambulatory Surgical Centers	163	State and Federal
End Stage Renal Disease Centers	176	State and Federal
Home Health Agencies (HHA)	141	State and Federal
Home Medical Equipment Providers	381	State
Hospices - Home Care Organizations	59	State and Federal
A contracted service by a licensed HHA or ICF	156	State
Hospitals	160	State and Federal
Nursing Homes	321	State and Federal
Residential Hospices	7	State

Source: Office of Health Care Facilities.

Although the 2011 audit focused just on complaint processing, in this audit we also focused on regular health surveys done to initially license and relicense facilities because surveyors are drawn from the same pool, and delays in performing complaint surveys could impact the timeliness of regular surveys, and vice versa. In addition, a December 2014 Department of Health internal audit report found delays in completing both regular and

complaint surveys. CMS found similar delays in its State Performance Annual Review for federal fiscal year 2014, its latest review of the Office of Health Care Facilities, as of July 2015.

Our objective was to determine whether the Office of Health Care Facilities performed complaint surveys and regular health surveys in a timely manner. In order to do so, we performed two file reviews for surveys done from July 1, 2014, to December 31, 2014, using random samples of 25 complaint surveys and 25 regular surveys for state-licensed facilities. (The Board for Licensing Health Care Facilities does not regulate facilities that are strictly federally regulated, like rural health clinics, but Office of Health Care Facilities staff do respond to complaints regarding both state-licensed and federally certified facilities.) Section 68-11-210, *Tennessee Code Annotated*, requires that all state-licensed health care facilities be inspected within 15 months of the last inspection. From our audit work, we determined that both types of surveys were not always performed in a timely manner.

Unresolved Issue:

Complaint and regular health surveys not always timely

Complaint Surveys

The random sample of the 25 facilities the Office of Health Care Facilities surveyed for complaints consisted of 17 nursing homes, 3 assisted-care living facilities, 3 hospitals, 1 home health agency, and 1 residential home for the aged. We selected the facilities based on the percent of total complaints involving each facility type and the average number of complaints per facility for each facility type. We focused only on facilities with Immediate Jeopardy and Non-immediate Jeopardy High complaints, as these are the most serious types of complaints. Although not as urgent as Immediate Jeopardy complaints (indicating immediate serious danger), Non-immediate Jeopardy High complaints are of such a nature that the alleged noncompliance may cause harm to an individual's mental or physical health and require a rapid response by the office.

If the office's Complaint Intake Unit prioritizes a complaint as Immediate Jeopardy, then office surveyors must initiate an on-site investigation within two working days of the complaint reaching the unit. If a complaint is prioritized as Non-immediate Jeopardy High, then an on-site investigation must begin within 10 working days after being prioritized for nursing homes, or 45 calendar days for end stage renal disease facilities (dialysis clinics), home health agencies, hospices, and hospitals. State-licensed-only facilities, like assisted-care living facilities and residential homes for the aged, are not prioritized as Non-immediate Jeopardy High. After Immediate Jeopardy, the next highest prioritization level for these facilities is Non-immediate Jeopardy Medium, which requires an on-site investigation within 90 working days after prioritization.

Thirteen complaints involved incidents prioritized as placing patients or residents in Immediate Jeopardy, while the remaining 12 complaints were Non-immediate Jeopardy High complaints. None of the 13 Immediate Jeopardy complaints were completed within the required inspection time frame, while only 3 of the 12 Non-immediate Jeopardy High complaints were completed (see table below). All complaint cases reviewed were fully documented.

Table 2
Results of Complaint Surveys File Review
July 1, 2014, to December 31, 2014

	Prioritization Level	
	Immediate Jeopardy	Non-immediate Jeopardy High
Time guidelines met	0 cases	3 cases
Time guidelines not met	13 cases	9 cases
Average time to initiate onsite survey	74 days	115 days
Minimum time taken	8 days	6 days
Maximum time taken	274 days	315 days

Regular Health Surveys

As stated above, Section 68-11-210, *Tennessee Code Annotated*, requires that all state-licensed health care facilities be inspected within 15 months of the last inspection. We selected a random sample of 25 facilities to determine the timeliness of their regular health surveys: 17 nursing homes, 3 assisted-care living facilities, 2 residential homes for the aged, 2 home health agencies, and 1 end stage renal disease facility. We used the same methodology to select these facilities as we used to select facilities with complaints above. (Hospitals were not part of our sample as their accreditation substitutes for regular surveys.)

Our review revealed that 10 of the 25 facilities (40%) were not inspected within the legally required 15-month time frame, while surveyors did inspect the remaining 15 facilities on time. The 25 facilities averaged 17.5 months between surveys. (See table below.) The regular survey cases we reviewed were fully documented.

Table 3
Time Since Previous Survey
July 1, 2014, to December 31, 2014

Facilities With Late Surveys	
Average time taken above 15-month requirement	289 days
Least time taken above 15-month requirement	27 days
Maximum time taken above 15-month requirement	608 days
Average time between surveys	746 days/25 months
All Facilities	
Average time between surveys	533 days/17.5 months

The Office of Health Care Facilities does not have a computerized system to efficiently, effectively, and easily determine when every facility is due for its next regular survey. Our

attempts to obtain data for our file review in an expeditious manner from the Department of Health on backlogged surveys for those facilities surveyed from July to December 2014 were not successful. The Director of Health Facilities stated that information regarding when each facility was due for its regular survey was not always easily retrievable and that, in many cases, he relied on Department of Health information systems staff and talks with surveyor staff to obtain this information. The information systems staff had to manually look up each facility to obtain the previous survey dates. This approach is a lengthy process and could result in data entry or other errors.

CMS does have a computerized system to assist in the scheduling and monitoring of facility inspections, the Scheduling and Tracking System (AST), which is an add-on to its Automated Survey Processing Environment (ASPEN) system. Although not required by CMS, all states have access to AST to facilitate scheduling and monitoring of the regular survey process for both federal and state-licensed-only facilities, complaints, and enforcement cases. According to regional office management, the Office of Health Care Facilities has not implemented AST, although ASPEN is used to document survey work.

Surveyor Availability

The 2011 audit found that the Office of Health Care Facilities had staffing shortages that hindered timely responses to complaints. During this audit, office management stated that this was still the case, impeding not only complaint surveys, but regular health surveys. As of August 2015, there were eight vacant surveyor positions in the Office of Health Care Facilities, representing approximately 10% of all positions. (See table below.)

Table 4
Office of Health Care Facilities
Number of Surveyor Positions

Position Classification	Region			Total Positions
	East	Middle	West	
Filled	27	8	34	69
Vacancies	4	3	1	8
Total	31	11	35	77

Source: Office of Health Care Facilities.

The Director of Health Care Facilities described replacing surveyors as a complicated process. He stated that CMS requires that registered nurses perform the surveys of health care facilities receiving federal reimbursement (i.e., federally certified facilities, which are evaluated by the same surveyors that review state-licensed facilities). All surveyors must obtain certification through the Standard Minimum Qualification Test. This involves six months of training to learn the federal manual requirements, which then qualifies the surveyor to conduct the facility surveys. The director said that as a practical matter, surveyors are not fully prepared to conduct facility surveys until they have worked in the field for approximately one year with supervision. He emphasized that surveyor conclusions have to stand up in court, so there is a need for proper training.

The director stated that assigning surveyors to county health departments is not a practical solution to excessive travel because the Department of Health would have to install a federal server in several county health departments for surveyors to enter the results of their surveys in the ASPEN system. Right now, the surveyors perform their inspections and then return to the regional office to enter the information.

Untimely complaint surveys and regular health surveys of health care facilities could jeopardize the safety and welfare of persons residing in these facilities. In addition, regarding federally certified facilities, untimely surveys could result in the Office of Health Care Facilities' loss of federal funding from CMS.

Recommendation

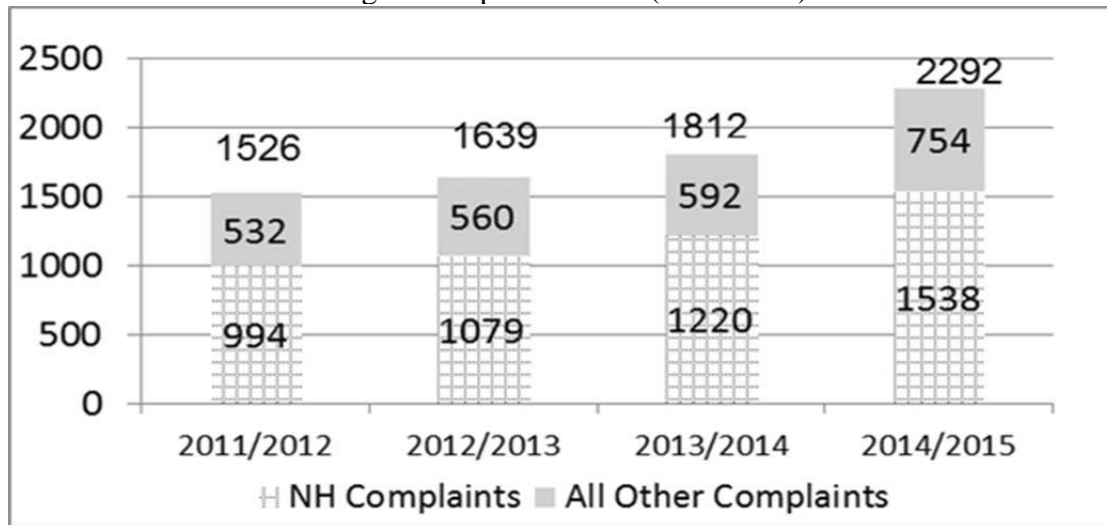
The Office of Health Care Facilities should take steps to ensure that both complaint surveys and regular health surveys are conducted in a timely manner, as required by state statute and CMS requirements. This includes filling surveyor vacancies and training this staff as expeditiously as possible. The office should develop and implement a computerized tracking system to efficiently and effectively determine which health care facilities are due for regular surveys.

Management's Comment

The Office of Health Care Facilities (HCF) appreciates the broadened review of the work of HCF to include regular health surveys, which offers perspective for the assessment of the totality of responsibilities performed by HCF surveyors relative to the 2011 audit. The audit correctly acknowledges that the surveyors conducting complaint investigations and regular health surveys are accountable for timeliness of survey work to the State for all licensed facilities, without deemed status, and to CMS for a number of facilities that are also federally certified to participate in Medicare and Medicaid. These responsibilities are managed by the same group of surveyors.

Since FY 2011 – 2012, we have seen a steady increase (50.1%) in complaints (see Fig. 1). This has resulted in a backlog of complaint investigations. Of the 2,292 complaints received in FY 2014-2015 (as of September 29, 2015), 1,500 (65.4%) have been investigated with 792 (34.5%) awaiting investigation, of which 263 are nursing home (NH) complaints.

Fig.1. Complaint Intake (2011-2015)



Due to the fact that surveyors for complaint investigations and annual facility surveys are drawn from the same pool, HCF has had to prioritize survey workload completion. During the relevant period reviewed by the auditors, as noted, HCF has struggled to complete annual health surveys within the 15 month requirement, which had significant impact as it relates to CMS state survey requirements. As of July 30, 2015, the timeliness of those surveys has been resolved and those facilities are meeting the requirement that annual health surveys be performed within 15 months, thus satisfying timeliness requirements.

To further address the lack of resolution relative to timeliness of the work performed by HCF surveyors, the Office of Health Care Facilities has reestablished the Middle TN Regional Office (MTRO) and has filled 6 of the 12 vacancies acquired by transferring surveyor positions to MTRO as they became vacant in East and West TN. However, a more comprehensive solution that addresses the multifaceted complications of a limited pool of surveyors and ever-increasing responsibilities and demands has been developed. The plan is designed to expedite the reconstitution of the MTRO with the addition of 11 new surveyor positions and focus on fully engaging this Middle TN Office in all survey work as soon as possible to positively impact timeliness issues. Further, HCF has begun assessing and will implement an appropriate electronic tracking system to enhance the efficiency and effectiveness of tracking surveys.

Follow-up Item 2 – Abuse Registry (Partially Resolved)

May 2008 Board for Licensing Health Care Facilities Audit, Finding 1:

“The Abuse Registry process has several weaknesses that highlight the need for clear policies and procedures, increased management control and monitoring of compliance with policies, and improved documentation.”

The audit recommended the following:

- Division of Health Care Facilities [now Office of Health Care Facilities] management should review policies and procedures and revise them as

necessary to ensure that policies address all major actions related to placement on and removal from the Abuse Registry; responsibility for the actions is clearly assigned; and any time frames set are consistent with other federal and state requirements and laws. Management should then ensure that updated policies are communicated to all relevant staff.

- Management should ensure there is supervisory review of Abuse Registry actions to monitor the timeliness of abuse investigations and hearings and to ensure that all required actions are taken and adequately documented in the files. Management should ensure that all persons recommended for placement on the registry are placed timely and listed with complete and correct information (including any nicknames as well as full legal name) so that those individuals can be identified if they subsequently seek employment in a facility that cares for vulnerable individuals. Removals of persons from the registry should be tracked and fully documented, and management should ensure that the reasons for removal are fully explained and meet the criteria for removal.
- Division of Health Care Facilities management should review the statutory provisions for other Tennessee registries (particularly sex offender registration statutes) to identify changes that could be made to strengthen and improve the Abuse Registry legislation, for example, adding specific authority for updating the registry, requiring registrants to provide complete name and all aliases as well as any name changes, and adding penalties if registrants fail to provide complete, accurate, and up-to-date information. Department of Health management should then propose to the General Assembly appropriate legislative changes.

Section 68-11-1001, *Tennessee Code Annotated*, requires the Department of Health to establish and maintain a registry containing the names of persons who have abused, neglected, or misappropriated or exploited the property of vulnerable individuals. The Abuse Registry is administered by the Office of Health Care Facilities and had 1,914 active registrants (i.e., not removed or deceased) in June 2015. Information on individuals on the registry is available to the public through a Department of Health website.

Since the prior 2008 audit, Division of Health Care Facilities Policies 205, 206, 228, and 238 have been replaced by a single policy, Division of Health Care Facilities Policy 315, which came into effect May 2008. As a result, guidance on the operations of the Abuse Registry has been consolidated into a single document to avoid confusion regarding procedures staff should follow.

It appears management oversight of the Registry and Abuse Registry Program Manager is adequate, through segregation of duties. For example, the Certification Manager supervises the Abuse Registry Program Manager through evaluations and participation in the Abuse Panel. The Abuse Panel, which decides on Department of Health placements on the Abuse Registry, includes the Abuse Registry Program Manager, the Certification Manager, an Assistant General

Counsel, the Assistant Director of the Office of Investigation, and the Quality and Improvement Program Manager. Referrals from other agencies, like the Department of Intellectual and Developmental Disabilities and the Tennessee Bureau of Investigation, are immediately placed on the registry, as these agencies conduct their own investigations and administrative proceedings. The Registry and Abuse Registry Program Manager also oversees the Certified Nurse Aide Registry. Tables below list the numbers of active individuals on the Abuse Registry, as well as those not active because they have been removed or are deceased, as of June 2015.

Table 5
Individuals Active on Abuse Registry by Referral Agency
As of June 2015

Agency Source of Referral	Number on Abuse Registry
Department of Health	895
Department of Intellectual and Developmental Disabilities	756
Tennessee Bureau of Investigation	125
Department of Mental Health and Substance Abuse Services	75
Department of Human Services	29
County courts	17
Unknown*	17
Total	1,914

* Mostly county court referrals, but listed as “Unknown” due to computer system limitations.

Source: Office of Health Care Facilities, Abuse Registry.

Table 6
Individuals on Abuse Registry Removed or Deceased
As of June 2015

Agency Source of Referral	Number Removed	Number Deceased
Department of Health	20	94
Department of Intellectual and Developmental Disabilities	23	15
Tennessee Bureau of Investigation	1	2
Department of Mental Health and Substance Abuse Services	2	2
Department of Human Services	0	2
County courts	1	0
Unknown	0	2
Total	47	117

Source: Office of Health Care Facilities, Abuse Registry.

We reviewed a random sample of 18 placements by the Department of Health in calendar years 2012 through 2014, and all seven removals of individuals placed on the Abuse Registry

during that period. All 18 placements had sufficient documentation on cause of placement, individuals were given a 30-day notice that they were to be placed unless they appealed, and the file contained the investigation of alleged abuse. We reviewed the information on the Abuse Registry website for these individuals, using both their names and social security numbers, and determined that information was complete. We also reviewed information on the Certified Nurse Aide Registry website to determine if the eight individuals who were Certified Nurse Aides were shown as in good standing. Information on the website had all eight nurse aides with revoked certifications. None of the 18 placements had administrative hearing appeal requests.

Our review of information involving the seven individuals removed from the Abuse Registry similarly did not find problems. All seven removals had sufficient documentation regarding the reasons the individuals were placed on the registry, as well as the reasons for removal (including agency formal requests for removal). Only one removal involved a Department of Health placement (the other six removals involved Department of Intellectual and Developmental Disabilities placements). Our review of the Abuse Registry website determined that all seven individuals had been removed from that website. Because documentation deficiencies found in the 2008 audit appear to have been resolved, we determined there is no need for legislative recommendations for changes in statute.

Unresolved Issue:

Investigations of abuse allegations not always timely

The 2008 audit found that 74% of abuse allegations prioritized as Immediate Jeopardy by the Complaint Intake Unit resulted in on-site investigations of these allegations within two working days, as required by federal and state policy. We found that of the seven placement cases that were prioritized as Immediate Jeopardy, only three (43%) met the two-day standard. (We did not review cases involving the next category of prioritization in terms of severity of alleged abuse, Non-immediate Jeopardy High, because state-only licensed facilities, like assisted-care living facilities, had as their next category Non-immediate Jeopardy Medium.) Overall, the seven cases averaged 42 days from complaint intake to initiation of on-site investigations, ranging from 1 day to 146 days. The median time was 27 days.

In addition to delays initiating investigations, there were long delays in getting the results of investigations to the central office so individuals could be placed on the Abuse Registry in a timely manner. We found that for the 18 placement cases we reviewed, it took an average of 140 days from investigation completion to placement. For the seven Immediate Jeopardy cases, it took an average of 134 days. For these cases, times ranged from 61 to 308 days.

According to the Registry and Abuse Registry Program Manager, once she received this information from the regional offices making the investigations, placement was rapid (within a few days). Some regional office staff stated these delays were caused by a number of factors, like due diligence requirements (including contacting perpetrators and/or witnesses to confirm the results of investigations using, for example, certified letters), delays caused by working with law enforcement agencies, and heavy surveyor workloads. Meeting due diligence requirements could take a couple of months. Other regional staff asserted delays with placement were not the result of delayed transfer of investigation results to the central office. The staff stated that the

Office of Health Care Facilities did not have time guidelines in this area. Without timely initiation of investigations and timely processing of investigation results by the Office of Health Care Facilities, vulnerable individuals are at increased risk of abuse by individuals with a record of such abuse.

Recommendation

The Office of Health Care Facilities should ensure that all investigations against individuals allegedly abusing vulnerable individuals are initiated and that investigation results are processed in a timely manner so proven abusers are placed on the Abuse Registry as rapidly as due process requirements allow. The office should develop and implement related time guidelines, taking into consideration due process requirements.

Management's Comment

The investigation of abuse allegations is a complaint investigation function with the personnel responsible for the investigation being drawn from the same pool of surveyors conducting complaint investigations and regular health surveys. (Refer to Management Comments in the previous finding.) The efforts noted in the previous response to address complaint and survey investigations will enable HCF to more effectively address investigations of abuse allegations. In addition, we are in the process of promulgating regulations for the Registry of Persons Who Have Abused, Neglected, Misappropriated or Exploited the Property of Vulnerable Individuals (Chapter 1200-08-38), that will outline procedures and timeliness for reporting to the Registry.

Follow-up Item 3 – Board Waiver Policy (Partially Resolved)

May 2008 Board for Licensing Health Care Facilities Audit, Finding 3:

“Licensed health care facilities are not required to report on the status of waivers.”

The audit recommended the following:

- The division should develop and implement rules that require facilities to notify the board of changes in the waiver status and should impose penalties if the facility fails to notify. These requirements would help ensure the board has the most current information on waiver status, allowing for improved waiver monitoring and tracking. Division management should also develop formal procedures regarding waiver monitoring and tracking.

Section 68-11-209, *Tennessee Code Annotated*, grants the Board for Licensing Health Care Facilities the authority to waive the rules and regulations for any facility as long as the waiver does not have a detrimental effect on the health, safety, and welfare of the public. The 2008 audit found that the board did not require facilities to report the status of rules and

regulations waived, nor had it developed and implemented a related written policy. In responding to the 2008 audit's recommendation, board management stated that it would

submit to the Board for Licensing Health Care Facilities for review and approval a written policy detailing the waiver monitoring and tracking process. The Director [of Licensure] will also present recommendations for a revision to Rule 1200-8-6-.04, that will:

- require facilities to report to the board staff the status of rules and regulations previously waived (e.g., to ensure a facility is not violating a waiver requirement), and
- recommend penalties for waiver violations.

Unresolved Issue:

Policy does not impose penalties and no proactive monitoring is occurring

In response to the prior finding, the department developed a policy memorandum requiring that a facility that has been granted a waiver notify the board in writing of the change in waiver status. However, the policy does not set penalties for waiver violation because the department was legally advised that they did not have the statutory authority to do so. Additionally, the department has not developed a proactive monitoring mechanism. Rather, it relies on waiver recipients to notify the board of any changes. The department reports that no waiver recipient has ever notified the board of changes.

We reviewed documentation regarding waivers granted by the board from May 2014 to May 2015 to determine if there was any regular communication between health care facilities, the board, and board staff regarding the status of waivers, or any other evidence of informal monitoring in the absence of a formal proactive mechanism (see Table 7). We found no evidence of such communication (e.g., formal or informal letters or copies of emails). The form letter the board's staff uses to inform a facility that the board approved its waiver has no regular status update requirement.

Table 7
Decisions on Waivers Processed by the Board for Licensing Health Care Facilities
May 2014 to May 2015

Board Decision	May 2014	September 2014	January 2015	May 2015	Totals
Granted	22	20	28	21	91
Denied	0	3	0	1	4
Totals	22	23	28	22	95

Source: Office of Health Care Facilities.

Section 68-11-210, *Tennessee Code Annotated*, requires that all state-licensed health care facilities be inspected within 15 months of the last inspection. This appears to be the only

method by which the board would discover that a facility had not conformed to the waiver requirements, unless a surveyor was investigating a complaint at the facility and found that the facility was operating without a licensed administrator. Developing a formal monitoring mechanism could help ensure a facility is not violating a waiver requirement.

Recommendation

The Office of Health Care Facilities should develop penalties for facilities who do not meet their waiver reporting and other requirements. This may require working with the department's legal counsel to update the previous advice that the department does not have adequate statutory authority to develop and impose penalties if the facility fails to notify. If legal counsel advises that additionally statutory authority is needed to impose such penalties, the department should work with the General Assembly to amend *Tennessee Code Annotated* as needed.

Additionally, the Office of Health Care Facilities should also develop formal procedures providing proactive waiver monitoring and tracking.

Management's Comment

It is important to note that Policy Memo 77 provides that a facility granted a waiver must notify the board in writing when there is a change in status. It also provides that facilities who come into compliance notify the Board in writing that they are meeting all requirements.

Policy 77 further requires staff to proactively conduct an administrative review in advance of Board meeting and contact via telephone those facilities whose waivers are expiring. It is then the responsibility of the facility to request an extension of their waiver in writing for consideration by the Board. If no request is received, the facility will be held to the standards of their licensure type for which non-compliance subjects them to deficiency citation, which could include monetary penalty.

HCF will work with the TDH Office of General Counsel (OGC) to make appropriate revisions to the current Board policy memorandum as deemed within the authority of the Board or otherwise warranted. HCF will also staff communications with parties granted waivers to ensure they are consistent with the policy.

Follow-up Item 4 – Interdepartmental Agreement (Resolved)

May 2008 Board for Licensing Health Care Facilities Audit, Finding 6:

“The Division of Health Care Facilities and the Department of Commerce and Insurance should adopt the required interdepartmental agreement concerning oversight of health maintenance organizations, and should include in that agreement provisions requiring that HMOs submit corrective action plans when deficiencies are identified.”

The audit recommended the following:

- The Division of Health Care Facilities and the Department of Commerce and Insurance should promptly adopt an interdepartmental agreement concerning oversight of Health Maintenance Organizations as required by Section 56-32-215(a), *Tennessee Code Annotated*. The agreement should include provisions requiring the HMOs to submit Plans of Correction when applicable. The Division of Health Care Facilities should maintain HMO survey files to ensure that surveys are conducted timely.

Section 56-32-115, *Tennessee Code Annotated* [Section 56-32-215 was changed to Section 56-32-115 since the 2008 audit] requires the commissioners of the Department of Commerce and Insurance and the Department of Health to coordinate the regulation of Health Maintenance Organizations (HMOs). While the Department of Commerce and Insurance is responsible for financial reviews of the HMOs and/or their providers, the Department of Health is responsible for determining whether the HMO has the capability to provide health care services efficiently, effectively, and economically, through surveying the HMOs. In addition, the departments are required by law to develop an interdepartmental agreement to coordinate oversight of the HMOs.

In its role in regulating HMOs' ability to provide health care services required by Section 56-32-115, the Department of Health's Office of Health Care Facilities used to conduct surveys to determine quality of health services. The law requires each HMO have such a survey done every three years. Section 56-32-115 allows the Department of Commerce and Insurance to suspend or revoke the license of an HMO if a survey proves that the HMO cannot provide the appropriate quality of health services.

However, in November 2008, the Department of Health, in responding to the recommendation that the required interdepartmental agreement be implemented, signed a memorandum of understanding (MOU) with the Department of Commerce and Insurance substituting quality of service surveys with HMO accreditation by the National Committee for Quality Assurance, a private, nonprofit organization specializing in health care quality control. The MOU became effective in December 2008.

Since the MOU was signed, no HMOs have applied to provide services in Tennessee under the state-only regulation provisions, according to the Department of Commerce and Insurance. Rather, department staff stated that all four commercial HMOs that have been approved since the MOU was signed service Medicare clients and thus were subject to review by the federal government.

Although an appropriate MOU was developed consistent with the prior recommendations, auditors noted that mutually agreed upon, clear, detailed formalized steps had not been developed by both parties to ensure the situation will be properly addressed if it arises in the future. For example, there are no formalized steps clearly outlining which agency is supposed to determine if accreditation is an acceptable substitute for quality of health services surveys.

OBJECTIVES, METHODOLOGIES, AND CONCLUSIONS

ADMINISTRATION OF MEDICATIONS IN ASSISTED-CARE LIVING FACILITIES

As stated in Section 68-11-202 et seq., *Tennessee Code Annotated*, the Board for Licensing Health Care Facilities is authorized to license and regulate assisted-care living facilities, among other types of health care facilities. According to Section 68-11-201, services provided by assisted-care living facilities are to

promote the availability of residential alternatives to institutional care for persons who are elderly or who have disabilities in the least restrictive and most homelike environment appropriate. Assisted-care living facility services shall be driven by a philosophy that emphasizes personal dignity, respect, autonomy, independence, and privacy and should, to the maximum extent appropriate, enhance the person's ability to age in place, while also ensuring that the person's medical and other needs are safely and effectively met.

Section 68-11-201 requires that medical services in an assisted-care living facility “must be provided by appropriately licensed or qualified staff or contractors of the assisted-care living facility, a licensed home care organization, another appropriately licensed entity, or by the appropriately licensed staff of a nursing home, acting within the scope of their respective licenses.” The board licensed 291 assisted-care living facilities, as of December 2014.

Our audit objective was to determine whether statutory and/or regulatory language regarding who is appropriately licensed to administer medications in assisted-care living facilities can be clearly interpreted. We reviewed statutes, rules and regulations, and related documentation, like penalty structure and board consent orders. We interviewed staff from the Department of Health’s Office of Health Care Facilities and Office of General Counsel, and a board member.

From our audit work, we determined that statutory and regulatory language regarding who is appropriately licensed to administer medications in assisted-care living facilities cannot be clearly interpreted. Details are in the following finding.

Finding

- 1. The board allows unlicensed staff to administer medications in assisted living facilities because rules are unclear regarding who can administer medications, and penalties for rule violations are insufficient**

Office of Health Care Facilities staff and the Assistant General Counsel advising both this staff and the Board for Licensing Health Care Facilities stated that it is unclear in statute who is qualified to administer medications to residents in assisted-care living facilities. Office of

Health Care Facilities staff also stated that it appeared assisted-care living facilities preferred to pay the fines when penalties are issued against them, instead of hiring higher paid licensed staff, like licensed nurses, to administer medications.

We reviewed six consent decrees issued by the board in May 2015 involving the assisted-care living facilities' payment of such fines. The six facilities each had one \$250 penalty concerning unauthorized personnel administering medications involving violation of Rule 1200-8-25-.07. The chart below describes the rules as of July 2015. The penalty for violation of any of these rules is the same: up to \$500 for the first offense and up to \$1,000 for the second offense in a 12-month period.

Rule	Description
1200-8-25-.07(2)	Medical services in an assisted-care living facility (ACLF) shall be provided by: (a) Appropriately licensed or qualified staff of an ACLF; (b) Appropriately licensed or qualified contractors of an ACLF; (c) A licensed home care organization; (d) Another appropriately licensed entity; or (e) Appropriately licensed staff of a nursing home.
1200-8-25-.07(5)	An ACLF shall: (a) Ensure that medication shall be self-administered in accordance with the resident's plan of care; (b) Ensure that all drugs and biologicals shall be administered by a licensed professional operating within the scope of the professional license and according to the resident's plan of care; and (c) Store all medications so that no resident can obtain another resident's medication.

Our review of relevant statutes, rules, and regulations determined that there is no clear or direct guidance regarding who is legally authorized to administer medications in assisted-care living facilities. However, Section 63-6-204, *Tennessee Code Annotated*, regards "any person . . . as practicing medicine within the meaning of this chapter who treats, or professes to diagnose, treat, operates on or prescribes for any physical ailment or any physical injury to or deformity of another." It is arguable that participating in the dispensing of medication is part of the treatment of an individual. Both Section 63-6-201, *Tennessee Code Annotated*, (related to the overall practice of medicine) and Section 63-7-120, *Tennessee Code Annotated*, (pertaining to nursing) require licensure to practice.

Although Rule 1200-8-25-.02(3) defines "administering medication" as "the direct application of a single dose of a medication to the body of a resident by injection, inhalation, ingestion, topical application, or by any other means, and the placement of a single dose of medication into a container," there is no definition of "assisting" in administering medications in assisted-care living facility rules and regulations. Licensed nurse practitioner rules and regulations, on the other hand, do have a definition of "assisting." Specifically, Rule 1000-02-.04(2) defines "assisting" as "helping, aiding, or cooperating."

Without appropriately trained and licensed staff administering medications, residents in assisted-care living facilities are exposed to unnecessary health risks. In addition, these facilities could become legally liable if unqualified staff harm, or appear to harm, its residents.

Recommendation

The Board for Licensing Health Care Facilities should amend its rules and regulations to clearly describe licensed medical practitioners (e.g., registered nurses or licensed practical nurses) as the only individuals qualified to administer medications, including assisting in administering medications, in assisted-care living facilities.

The board should develop a set of penalties that effectively deters assisted-care living facilities from using unqualified staff to administer medications.

The General Assembly may wish to amend Section 68-11-201, *Tennessee Code Annotated*, to specify that “appropriately licensed or qualified staff or contractors” providing medical services, including administering medications, in assisted-care living facilities be licensed medical practitioners.

Management’s Comment

We concur. It is important to acknowledge that central to this issue is what it means to “administer medication”. While a definition of the administration of medication exists, how it is applied in the context of ACLF settings has practical, economic and safety implications for all parties involved.

On May 8, 2014, the Board for Licensing Health Care Facilities formed the Assisted Care Living Facility Standing Subcommittee to address concerns specific to Assisted Care Living Facilities. The concerns raised herein will be brought to the attention of the Subcommittee, which will be responsible for recommending modifications, as needed, to the Board.

HEALTH CARE FACILITY CLOSURES

Section 68-11-207, *Tennessee Code Annotated*, authorizes the Board for Licensing Health Care Facilities to suspend or revoke the licenses of state-licensed facilities for reasons including

- violations of state and federal statutes and rules and regulations;
- illegal acts; and
- conduct or practices detrimental to the welfare of patients.

A facility may also choose not to renew its license, which is required annually by Section 68-11-206, *Tennessee Code Annotated*.

Our audit objective was to determine the board's policies and procedures for closing facilities in regard to the safe transfer of facilities' patients and residents to other facilities, and whether these policies and procedures were properly followed. We reviewed policy guidance and documentation on facility closures and talked to Office of Health Care Facilities staff. Because of the lack of scanned documentation in the office's Licensure and Regulatory System computer system (see Finding 2), we restricted our review of documentation to facilities closed in the first half of calendar year 2014.

From our audit work, we determined that both documentation of safe transfer of patients to other facilities and related policies and procedures were lacking. Details are in the following observation.

Observation

1. The Office of Health Care Facilities does not have policies and procedures to require documentation of the safe transfer of patients and residents from closed health care facilities to other facilities

The Licensure Manager stated that neither the Board of Health Care Facilities nor the Office of Health Care Facilities had policies on the transfer of patients from closed facilities, just "guidance" documents. Our review of these documents revealed only a general requirement for a list of transferring patients but no requirement for documenting whether these patients were safely transferred to an appropriate facility or other accommodations.

We reviewed documentation regarding the board's closure of health care facilities between January and June 2014. Of the six facilities with residents, only one, a residential home for the aged, had documentation of the transfer of its patients. However, whether these transfers were achieved in a safe manner or whether the new locations were appropriate to ensure the individuals' welfare was not documented. The remaining five facilities were two hospitals and three residential homes for the aged. Documentation of the successful transfer of all residents of closed health care facilities to new appropriate facilities is essential in ensuring their welfare.

SPRINKLER SYSTEMS

Sections 68-11-235 through 237, *Tennessee Code Annotated*, require licensed nursing homes, assisted-care living facilities, and residential homes for the aged to install sprinkler systems. All such facilities were required to be fully equipped with sprinklers by July 1, 2004; however, if they met certain requirements, they could have received extensions of up to 18 months from this date or 18 months from Department of Health's approval of their sprinkler system plan. (Residential homes for the aged could have received extensions up to 24 months from this date or 24 months from Department of Health's approval of their sprinkler system

plan.) Section 68-11-237 exempts residential homes for the aged from this requirement if they have less than 12 beds and are single story.

Our audit objective was to assess the Office of Health Care Facilities' efforts to determine these health care facilities' compliance with fire sprinkler statutory requirements. We reviewed statutes and interviewed staff from the office's Plans Review section. Also, we reviewed a random sample of 60 health care facilities inspected by the Plans Review section from July to December 2014: 26 nursing homes, 24 assisted-care living facilities, and 10 residential homes for the aged.

From our audit work, we determined that not all sprinkler compliance information was located in a single information system, and that compliance information for some facilities could not be located. Details are in the following observation.

Observation

2. Facility sprinkler system compliance information was located in multiple computer systems, and compliance information for some facilities could not be determined

The Plans Review section uses the federal Automated Survey Processing Environment (ASPEN) software system to record its life safety surveys of health care facilities. We reviewed a random sample of 60 health care facilities using ASPEN but could not determine if all 60 facilities were compliant with sprinkler system requirements. We could only determine compliance information for 41 of the 60 facilities (68%). All were compliant except a residential home for the aged.

Of the other 19 facilities, the Facilities Construction Director provided compliance information from an information system he used for 16 facilities, and all were compliant. He stated that he uploaded information from this system into ASPEN. He could not provide compliance information for the remaining 3 of the 60 facilities (5%): 2 assisted-care living facilities and 1 residential home for the aged.

Without all sprinkler system compliance information for all health care facilities available in a single database, the Office of Health Care Facilities cannot determine whether all facilities are compliant. As a result, the office cannot ensure the safety of all these facilities' residents and cannot ensure that facilities meet statutory requirements regarding sprinkler systems.

RBS TRANSITION TO LARS

The Department of Health for several years had been in the process of transitioning from the Regulatory Boards System (RBS), its computerized license system used to record licensing activities, to the Licensure and Regulatory System (LARS), a new system. LARS went online in April 2015 and is derived from Iron Data's Versa system. Iron Data stated on its website that

Versa is an enterprise-class, web-based product suite that supports regulatory agency business processes, including

- back office licensing and regulatory functions;
- online citizen services;
- workflow;
- document management;
- mobile inspections; and
- reporting and analytics.

Our audit objective was to evaluate the effectiveness of the transition from RBS to LARS and determine if the Office of Health Care Facilities' operational needs were met. We interviewed Department of Health staff and reviewed related documentation.

From our audit work, we determined that the transition from RBS to LARS has not been completed in a manner that meets all the operational needs of the Office of Health Care Facilities or other Department of Health licensing sections. Details are in the following finding.

Finding

2. There is a significant backlog of documents to be scanned into LARS

A significant function of a licensing system like LARS is data retrieval. However, a current backlog of documents to be scanned makes these documents' data unavailable, other than manually. Department of Health staff stated that this backlog is significant—a year behind—and as of August 2015, amounts to around 300 boxes of documents. This backlog affects not only the Office of Health Care Facilities but other Department of Health sections, including the Offices of Health Related Boards, Investigations, and Emergency Medical Services. The following are examples of types of documents yet to be scanned:

Applications and supporting documentation	Renewals
Reinstatement applications and supporting documents	Agreed citations
Requests for duplicate wall licenses and renewal certificates	Address changes
Correspondence to and from applicants and licensees	Name changes
Tennessee Student Assistance Corporation suspensions	Malpractice reports
Child support suspension	Board orders
Practitioner profiles and any changes	Certified mail cards
Reports from monitoring organizations	Returned mail
Complaint documents	Facility inspections

Department staff said that incompatible scanning is the primary cause of this backlog. The Department of Health had purchased scanning equipment and was awaiting resolution of security concerns by the Office of Information Resources so that compatibility testing could begin. A date to resolve the backlog problem had not been determined, as of August 2015. In the meantime, the backlog was increasing.

The backlog does not involve documents that had already been scanned into RBS before the change to LARS in April 2015. However, because of the scanning problem and resulting backlog, Department of Health licensing functions requiring recent data are seriously impaired considering the time and cost to manually retrieve this data.

Recommendation

The Department of Health should expeditiously resolve any impediments that prevent them from scanning licensing documentation into LARS in a manner that is both secure and ensures successful data transfer. Once scanning begins, the backlog should be reduced to a manageable level as soon as possible and should be maintained at that level.

Management's Comment

We concur. The backlog of documents to be scanned is an unforeseen consequence of implementing a new regulatory board system. This systems incompatibility is being addressed and the backlog for imaging of documents will be resolved.

APPENDICES

Appendix 1 Title VI and Other Information

The Tennessee Human Rights Commission (THRC) issues a report, *Tennessee Title VI Compliance Program*, (available on its website) that details agencies' federal dollars received, Title VI complaints received, whether each agency's Title VI implementation plan was filed in a timely manner, and any THRC findings taken on an agency.

Because nothing from the THRC report was directly applicable to the Office of Health Care Facilities, the following summary of Title VI information is directly related to the Department of Health.

According to the THRC's fiscal year 2014 report, the latest one available, the department filed its annual implementation plan prior to the October 1, 2013, due date. During the reporting period, THRC received seven complaints and closed five regarding the department. THRC issued no findings based on its review of the department's implementation plan.

The department received an estimated \$248,133,100 from the federal government in fiscal year 2014. Its Division of Health Licensure and Regulation received \$4,866,000.

The following table details the Board for Licensing Health Care Facilities members by gender and ethnicity as of August 2015. Two positions were vacant.

	Gender		Ethnicity					
	Male	Female	Asian	Black	Hispanic	Indian	White	Other
Total	8	8	0	2	0	0	14	0
Percentage	50%	50%	0%	13%	0%	0%	87%	0%

The following table details the Office of Health Care Facilities staff by job title, gender, and ethnicity as of August 2015:

TITLE	MALE	FEMALE	ASIAN	BLACK	HISPANIC	AMERICAN INDIAN	WHITE	OTHER
ADMINISTRATIVE ASSISTANT 1	3	9	0	5	0	0	7	0
ADMINISTRATIVE SECRETARY	1	0	0	0	0	0	1	0
ADMINISTRATIVE SERVICES ASSISTANT 2	1	5	0	2	0	0	4	0
ADMINISTRATIVE SERVICES ASSISTANT 3	1	5	0	1	0	0	5	0
ADMINISTRATIVE SERVICES ASSISTANT 4	0	4	0	2	0	0	2	0
ADMINISTRATIVE SERVICES ASSISTANT 5	1	0	0	0	0	0	1	0

TITLE	MALE	FEMALE	ASIAN	BLACK	HISPANIC	AMERICAN INDIAN	WHITE	OTHER
ASSISTANT COMMISSIONER 2	0	1	0	1	0	0	0	0
DIETETICS CONSULTANT	0	1	0	0	0	0	1	0
EXECUTIVE SECRETARY 1	0	1	0	0	0	0	1	0
FACILITIES CONSTRUCTION DIRECTOR	1	0	0	0	0	0	1	0
FACILITIES CONSTRUCTION SPECIALIST 3	6	0	1	0	0	0	5	0
FIRE SAFETY SPECIALIST SUPERVISOR	1	0	0	0	1	0	0	0
FIRE SAFETY SPECIALIST 1	8	1	0	0	0	0	9	0
FIRE SAFETY SPECIALIST 2	2	1	0	0	0	0	3	0
HEALTH FACILITIES PROGRAM MANAGER 1	1	2	0	0	0	0	3	0
HEALTH FACILITIES SURVEY DIRECTOR	1	0	0	1	0	0	0	0
HUMAN RESOURCES ANALYST 1	0	1	0	1	0	0	0	0
HUMAN RESOURCES ANALYST 3	0	1	0	1	0	0	0	0
LICENSING TECHNICIAN	1	0	0	0	0	0	1	0
MEDICAL SOCIAL WORKER 2	0	2	0	0	0	0	2	0
MEDICAL TECHNOLOGIST CONSULTANT 1	0	3	0	0	0	0	3	0
MEDICAL TECHNOLOGIST CONSULTANT 2	1	3	0	0	0	0	4	0
PHARMACIST 2	0	1	0	0	0	0	1	0
PUBLIC HEALTH NURSING CONSULTANT 1	8	63	0	7	0	0	64	0
PUBLIC HEALTH NURSING CONSULTANT 2	1	13	0	1	0	0	13	0
PUBLIC HEALTH NURSING CONSULTANT MANAGER	1	5	0	1	0	0	5	0
SECRETARY	0	1	0	0	0	0	1	0
STATISTICAL ANALYST 4	0	1	1	0	0	0	0	0
GRAND TOTAL	39	124	2	23	1	0	137	0

Appendix 2

Performance Measures Information

In April 2013, the General Assembly passed the Tennessee Governmental Accountability Act of 2013. This changed the state's requirements for department performance measures. The Department of Health, which has responsibility for the Board for Licensing Health Care Facilities and the Office of Health Care Facilities, reported four measures in the Governor's customer-focused program.

As stated in the Tennessee Governmental Accountability Act of 2013, "accountability in program performance is vital to effective and efficient delivery of government services, and to maintain public confidence and trust in government." In accordance with this act, all executive-branch state agencies are required to submit annually to the Department of Finance and Administration a strategic plan and program performance measures. As of August 2015, there were no performance measures on the Governor's Customer Focused Government Monthly Results website for the Department of Health that pertained to the Board for Licensing Health Care Facilities or the Office of Health Care Facilities.

Appendix 3

Budget Information

Division of Health Licensure and Regulation

Estimated Budget

For the Fiscal Year Ended June 30, 2015

<i>Source</i>	<i>Amount</i>	<i>Percent of Total</i>
State	\$ 8,853,700	48%
Federal	\$ 8,503,600	46%
Other	\$ 1,158,500	6%
Total	\$18,515,800	100%